

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 667

Introduced by Sullivan, 41; Carlson, 38; Dubas, 34; Loudon, 49.

Read first time January 21, 2009

Committee: Agriculture

A BILL

1 FOR AN ACT relating to fences; to amend section 34-102, Reissue
2 Revised Statutes of Nebraska; to state intent; to change
3 provisions relating to division fences; and to repeal the
4 original section.

5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 34-102, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 34-102 (1) When there are two or more adjoining
4 landowners, each of them shall construct and maintain a just
5 proportion of the division fence between them, and there shall be a
6 rebuttable presumption that a just proportion for construction and
7 maintenance shall be equal shares. If ~~except that~~ if the adjoining
8 landowners each cause or allow the use of the division fence to
9 confine livestock upon their respective properties, each landowner
10 shall construct and maintain the division fence between them in
11 equal shares. This section shall not be construed to compel the
12 erection and maintenance of a division fence if neither of the
13 adjoining landowners desires such division fence.

14 (2) Unless the adjoining landowners have agreed
15 otherwise, such fence shall be a lawful fence, as defined in
16 section 34-115.

17 (3) The duty assigned to adjoining landowners by this
18 section applies (a) when either or both of the adjoining lands lie
19 within an area zoned for agricultural or horticultural purposes as
20 defined in section 77-1359 and either or both of the adjoining
21 lands are utilized as agricultural or horticultural land and (b) in
22 all other areas of the state when both of the adjoining lands are
23 utilized as agricultural or horticultural land.

24 (4) The Legislature finds that the encouragement and
25 compelled duty of adjoining landowners for the construction and

1 maintenance of division fences to be beneficial to the public
2 interest and welfare. Such benefits are not confined to historical
3 and traditional societal benefits that accrue from the proper
4 constraint of livestock, including suppression of civil disputes
5 and public and private nuisances and protecting public safety.
6 Division fences promote the peace and security of society by the
7 demarcation of rural boundaries, physical separation of conflicting
8 land uses, enhancement of privacy, diminishment of frequency of
9 public burden imposed by incidences of trespass and adverse
10 possession, and the mitigation of impacts of conflicting land
11 use intrusion into those areas of the state devoted to and reserved
12 to agricultural and horticultural use.

13 Sec. 2. Original section 34-102, Reissue Revised Statutes
14 of Nebraska, is repealed.